

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DEFENDANTS' MOTION TO DISMISS

Defendant Barron Hooper moves this Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss Plaintiff Willie M. Patrick's Complaint. In support of this motion, the defendant submits the accompanying Memorandum in Support of the Motion to Dismiss.

Respectfully submitted,

/s/ Phillip H. Snelling
One of the Attorneys for Defendants

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WILLIE M. PATRICK,)
)
Plaintiff,)
)
vs.)
)
BARRON HOOPER and WALLY KOBYLANSKI,)
)
Defendants.)

Civil No. 08 C 3380

Judge Lefko

MEMORANDUM IN SUPPORT OF DEFENDANT HOOPER'S MOTION TO DISMISS

Defendant Hooper has filed a motion to dismiss plaintiff's complaint in this case.¹

Plaintiff's complaint is a two sentence statement asserting that defendants Hooper, plaintiff's union steward, and Kobylanski, his union business agent, caused plaintiff to suffer a loss of \$2,475.00 in wages. Complaint attached hereto as Exhibit A. Although his complaint fails to identify the employer, the date of the occurrences, or even the cause of his loss other than destruction of "important documents," the fact that Patrick is suing union officials in relation to his employment confirms that his claim is for breach of the duty of fair representation under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. Although plaintiff filed his original case in state court, defendant Hooper filed a notice of removal pursuant to 28 U.S.C. § 1441 (permitting removal of federal question claims). As noted in Rider v. MacAninch, 424 F.Supp.2d 353, 362 (D.R.I. 2006), "the label attached to a claim should not be determinative as to whether the claim is preempted by Section 301."

¹ Defendant Kobylanski has never been served with a copy of the complaint at issue in this case.

Claims for breach of the duty of fair representation can only be brought against unions and not individual union officials, as Patrick has done here. See Morris v. Local 819, IBT, 169 F.3d 782, 784 (2nd Cir. 1999); Carter v. Smith Food King, 765 F.2d 916, 920-21 (9th Cir. 1985); Montplaisir v. Leighton, 875 F.2d 1, 4 (1st Cir. 1989); Banks v. Alexander, 493 F.Supp.2d 1008, 1016 (S.D. OH 2007).

As further noted in Fox v. Parker Hannifin Corp., 914 F.2d 795, 801 (6th Cir. 1990), “section 301 preempts claims for negligence in the performance of ‘a duty arising out of the collective-bargaining agreement signed by the union as bargaining agent for the [employees].’” Quoting United Steelworkers of America v. Rawson, 495 U.S. 362, 110 S.Ct. 1904, 1910 (1990).

Whatever the nature of the claim being pursued against defendant Hooper as a union steward, the claim arises out of the breach of his duty of fair representation to plaintiff as a union member. Such a claim, even if it were adequately alleged under Rule 8(a), Fed. R. Civ. P., can only be brought against the plaintiff’s union, Teamsters Local 705, and not individual union officials.

Wherefore, defendant Hooper requests that this Court grant his motion to dismiss.

Respectfully submitted,

/s/ Phillip H. Snelling

One of the Attorneys for Defendant Hooper

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Willie M. Patrick

Plaintiff(s)

v.

Barber Hooper & Wally Kobyanski

Defendant(s)

No. 08MB-1793

Contract

Amount Claimed \$ 2618 + CC

Return Date 5-22-08

COMPLAINT

The Plaintiff(s) claim(s) as follows:

Mr. Hooper UNION STEWARD & MR. WALLY KOBYANSKI DESTROYED
IMPORTANT DOCUMENTS THAT CAUSED ME 2,475.00 IN BACK
PAY FROM MY EMPLOYER. WHEN I PRESENTED MY COPIES,
MR. HOOPER & MR. KOBYANSKI DENIES EVER HAVING COPIES
IN THEIR POSSESSION EVEN THOUGH MR. HOOPER'S SIGNATURE IS
ON ALL THE DOCUMENTS.

Business Agent
5/22/08
411-9522
25:5

I, Willie M. Patrick, certify that I am the _____
(Name) _____ (Name of Attorney if applicable)
plaintiff in the above entitled action. The allegations in this complaint are true.

Atty. No.: _____

Pro Se 99500

Dated: 4/22/08

Atty. (or Pro Se Plaintiff)

Name: Willie M. Patrick


EXHIBIT

A

Address: 2933 S USSEY AVE

Signature

City/State/Zip: MARLHAM, IL 60420Telephone: 708-596-5675

Under penalties as provided by law pursuant to 735 ILCS 5/1-109
the above signed certifies that the statements set forth herein
are true and correct.